IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

(1) D.B. CRIMINAL JAIL APPEAL NO.27/2003

(Kesha Ram @ Hapu Ram and Another. v. The State of Rajasthan)

(2) D.B. CRIMINAL JAIL APPEAL NO.74/2003

(Raju Ram. v. The State of Rajasthan)

Under Section 374 (2), Cr.P.C., against the Judgment dated 28.11.2002 passed by Smt. Rekha , Sharma, RHJS, the learned Additional Sessions Judge (Fast Track), Nagaur, in Sessions Case No.72/2001 (46/98).

DATE OF JUDGMENT :::: 22-08-2007

PRESENT

HON'BLE MR. JUSTICE BHAGWATI PRASAD

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr. J.S.Chaudhary) for Appellant (s).
Mr. Sandeep Mehta)
Mr. J.P.S.Choudhary, Public Prosecutor.
Mr. Pradeep Shah) for Complainant.
Mr. I.R.Choudhary)

BY THE COURT: (PER HON'BLE BHANDARI, J.):-

Aggrieved by the judgment dated 28.11.2002, passed by the Additional Sessions Judge (Fast Track), Nagaur, in Sessions Case No.72.2001 (46/98), appeal No.27/2003 was filed by appellants accused – Kesha Ram and Surja Ram, whereas Appeal No.73/2003 was filed by appellant accused - Raju Ram. Since both the appeals have been filed against the common judgment, thus both the appeals are decided by this common Judgment.

The brief facts of the case are that complainant – Omprakash submitted a written report at the Police Station, Nagar, at 10.15 p.m., on 12.05.1995. In the said complaint, it was reported that on 10.05.1998, at about 8.00 p.m., he and his father visited village Vaswani to attend a marriage and while they were returning back from the said place at around 11.00 p.m. After covering hardly hundred yards, complainant's motor cycle tyre got deflate. His father asked him to go and said he will come in Mohan Ram's tractor. However, his father has not come as yet. He inquired about his father from all the relatives and known persons, but he could not get any clue. His father did not reach even to the school and his whereabouts could not be found, even on asking, the staff of the school. Mohan Ram, however, informed that when his tractor was returning back

from the marriage, Kesha Ram @ Hapu Ram was standing with a motor cycle and 8 – 10 persons were there in the Jeep. On this information, he got suspicious as Kesha Ram was having enmity with them.

The FIR was, thereafter, registered at Police Station, Nagaur, being No.206/98. Police conducted usual investigation. Thereafter, challan was filed. The trial Court framed charges against the accused under Sections 147, 341/149, 120-B, 364, 302 and 201 of IPC. Accused denied charges and claimed trial.

At the trial, twenty-eight witnesses were produced and 49 documents were exhibited by the prosecution. The statements of the accused were recorded under Section 313 of Cr.P.C., where they denied all the allegations made against them. In defence, statement of four witnesses were recorded, whereas 7 documents were exhibited.

The learned trial Court acquitted accused Bhanwaru Ram s/o. Hardan Ram and Mohan Ram s/o. Dhura Ram, by giving them benefit of doubt. Accused Chatra Ram s/o. Mukna Ram was also acquitted. Accused appellants Hapu Ram @ Kesha Ram, Surja Ram and Raju Ram were convicted and sentenced for separate offences and their order of conviction and sentence is

as under :-

Name of accused	***Convicted u/s***	***Sentenced***
Hapu Ram @ Kesha Ram and Surja Ram	341 IPC	One month's simple imprisonment and a fine of Rs. 500/-, in default to further undergo 15 days' simple imprisonment.
Hapu Ram @ Kesha Ram and Surja Ram, Raju Ram.	364 IPC	Ten years' simple imprisonment with a fine of Rs. 20,000/- each, in default to undergo two years' simple imprisonment.
Hapu Ram @ Kesha Ram and Surja Ram, Raju Ram.	364, 302 IPC read with Sec. 120B	Life imprisonment and a fine of Rs. 20,000/- each, in default to undergo three years' simple imprisonment.
Hapu Ram @ Kesha Ram and Surja Ram,	302, IPC	Life imprisonment and fine of Rs. 25,000/- each, in default to undergo three years' simple imprisonment.
Raju Ram.	302/34, IPC	Life imprisonment and fine of Rs. 25,000/- each, in default to undergo three years' simple imprisonment.
Hapu Ram @ Kesha Ram and Surja Ram.	201 IPC	Seven years' simple imprisonment and a fine of Rs. 15,000/- each, in default to further undergo one and half years' simple imprisonment.
Raju Ram	201/34 IPC	Seven years' simple imprisonment and a fine of Rs. 15,000/- in default to further undergo one and half years' simple imprisonment.
Raju Ram	341/34 IPC	One month's simple imprisonment and a fine of Rs. 500/-, in default to further undergo 15 days' simple imprisonment.

Learned counsel appearing for the appellants submitted that witness Chatra Ram should not have been considered co-accused, because he has not committed any offence, hence testimony of said witness should not have been relied by the trial

Court by treating him to be co-accused. According to the learned counsel, said witness had even sent a letter that he had given evidence under pressure. Thus, according to the learned counsel for the appellants, trial Court has wrongly considered the statement of witness Chatra Ram. It was further urged that even statement of Chatra Ram is not being supported by independent witnesses. It was then urged that Chatra Ram was arrested by the Police on 14th May, 1998, whereas all recoveries were made on 16th May, 1998 thus recoveries become doubtful. It was lastly urged that no case is made out against Surja Raj and Raju Ram.

Per contra, learned Public Prosecutor urged that the statement of PW 1 Chara Ram was rightly relied by the trial Court as he was found accused in the investigation on registration of FIR and before he was made approver, all necessary proceedings were undertaken, so that said witness may make statement with free will and without any fear. The trial Court considered prosecution case, after taking note of complete material available on record and thereupon only, finding was recorded against Hapu Ram, Surja Ram and Raju Raj in that regard, all the arguments of the learned counsel for the accused were also considered. Thus, according to the learned Public Prosecutor, there is no ground to interfere with the judgment of the trial Court.

We have heard the learned counsel for the parties and considered their submissions and gone through the material available on record.

We first take up the argument of the learned counsel for the appellant that the statement of approver should not have been considered as he was wrongly considered to be a co-accused. It has further been argued that even said witness has sent a letter to the effect that his evidence was recorded under pressure. The last argument is that Chatra Ram – approver was arrested on 14th May, 1998 and recoveries were effected on 16th May, 1998. Thus, all recovery were illegal. We have considered this argument of the learned counsel for the appellant. It is not in dispute that a case under Sections 147, 341/149, 120-B, 364, 302 and 201 of IPC was registered and during investigation, Kesha Ram and other accused, including Chatra Ram were found involved as Chatra Ram also accompanied other accused in the jeep and a case of criminal conspiracy as well as commission of offence by unlawful assembly was made out, thus, it cannot be said that approver – Chatra Ram was not co-accused at that stage. Hence, his statement as approver should not have been relied. In our opinion, no illegality is committed in relying the statement of Chatra Ram, who was otherwise an eye witness. So far as the other argument that his statement was recorded under pressure and for that reason, approver had even sent a

letter is concerned, the matter was discussed by the trial Court at length where it was found that statement of Chatra Ram was recorded after giving him full liberty and time to act as approver. Necessary procedure as required was undertaken and it is only, thereafter, that his statement was recorded as approver. Even said Shri Chatra Ram was made known about the consequences, hence after recording of statement, if any letter is sent , then it is nothing but an attempt of after thought, thus cannot be considered and accepted. So far as the question of recoveries having been made on 16th May, 1998, though Chatra Ram was arrested on 14th May, 1998, we have considered this argument also and find that Chatra Ram was not attested on 14th May, 1998, but was arrested on 16th May, 1998 itself and on the same day, recoveries were effected. In that regard, we may refer to the statement of PW 27 Jiwan Singh, where he has stated that Chatra Ram was arrested on 16th May, 1998, at 7.30 a.m., from Barli (Nagaur). Thus, Chatra Ram was not arrested on 14th May, 1998 as submitted by the appellant. For these reasons, we do not find any fa ce in the argument of the earned counsel for the appellant. Thus, we are not inclined to accept this argument of the learned counsel for the appellant.

Considering the merit of the case, statement of PW 1 Chatra Ram approver is quite material, who stated that on 10.5.98, he was standing along with his Jeep No. RJ 21-C-3091

during day time and, at that time, Raju Ram and Surja Ram came to him. Raju Ram and Surja Ram hired that Jeep for a sum of Rs.900/- for going to village Budi. From the Bus Stand, they started for Raidhanu and first they reached on the room of Hapu Ram @ Kashu Ram, thereafter, they visited Naina Ram's house and took their dinner at about 12.00 hours. Then, Raju Ram, Mohan Ram, Surja Ram and Bhanwar Ram had taken him to village Budi. Jeep was taken and driven by Raju Ram. On the way, Hapu Ram was found standing with the motor cycle. Hapu Ram and Raju Ram had some conversation at a distance as Raju Ram got down from the Jeep. Hapu Ram joined them in the jeep and Raju Ram turned the jeep to other side thereafter. On the way, deceased was found and when Jeep reached close to deceased Jiwan Ram, then Hapu Ram and Surja Ram got down and after some conversation, brought deceased Jiwan Ram in the Jeep forcefully. He and Mohan Ram resisted for the same, but Hapu Ram said they may be dropped at Nagaur, otherwise, he will kill all of them. Hapu Ram was having pistol in his hand. Later on. Mohan Ram was left out and Jeep was taken by Hapu Ram and, at that time, Surja Ram and Hapu Ram catch hold of deceased Jiwan Ram on the front seat, and he along with Raju Ram and Bhanwar Ram were asked to sit in the back side of Jeep. Hapu Ram then stated that if anybody will make noise, then he will kill them. He was having a pistol in his hand. Hapu

Ram had, thereafter, taken Jeep towards Bidasar. After going to 15 – 20 km. from village Katar, Jeep was stopped near a well existing on the road side. After stopping Jeep, Hapu Ram and Surja Ram strangulated Jiwan Ram by a cycle tube and was thrown in the well. Hapu Ram then threatened them not to say anything to anyone, otherwise informer would be killed. Thereafter, they came back. The said witness further stated that before strangulation of deceased Jiwan Ram, Hapuram asked Jiwan Ram to marry his younger daughter with him and, in that case, he will relieve him. In the cross-examination, it was stated that he is not knowing as to what was stated by Hapu Ram and Surja Ram to deceased Jiwan Ram before he was taken in the Jeep. Jiwan Ram did not resist or make noise while sitting in the Jeep. Deceased Jiwan Ram never tried to come out of Jeep and he was not tied up in the Jeep. The witness further admitted that no cycle tube was there in the Jeep. Jiwan Ram never protested either before boarding or leaving the Jeep. He had not seen Surja Ram and Hapu Ram threatening deceased. He had seen Hapu Ram strangulating Jiwan Ram by a cycle tube and it is Hapu Ram who had thrown Jiwan Ram in the well.

PW 4 Omprakash stated that he and his father went to attend marriage of Mohan Ram's brother-in-law and while returning, at about 11.00 p.m., the tyre of the motorcycle got punctured. His father deceased Jiwan Ram asked him to proceed

with the motor cycle with an arrangement that he will come in Mohan Ram's tractor. His father – Jiwan Ram, thereafter, did not come, therefore, he had inquired it from Mohan Ram who informed that he had seen Hapu Ram with motor cycle at one side of village Hapunda. Nothing was informed about deceased Jiwan Ram by Mohan Ram.

The Prosecution produced one letter marked Ex.P-21 which was written by Hapu Ram. Said letter was recovered from the box belonging to deceased Jiwan Ram. Hapu Ram had written that his (Hapuram's) marriage with deceased's daughter should not be cancelled and given threatening therein the hand written letter was received by deceased is corroborated by PW 4 Omprakash and PW 3 Mohan Ram. Other witness stated that accused Hapu Ram was annoyed with the deceased due to cancellation of his marriage and was giving threatening for that reason.

PW 20 Jyani stated that initially, they were thinking to engage her daughter with Hapu Ram, but ultimately she was married to one Mohan Ram hence Hapu Ram was annoyed with them. Even PW 1 Chatra Ram had also stated that before strangulation of Jiwan Ram, Hapu Ram stated that deceased - Jiwan Ram should at least marry his younger daughter with him and, in that case, Jiwan Ram would be relieved, but when the proposal was not accepted, Hapu Ram strangulated Jiwan Ram.

PW 2 Jagmal stated that Hapuram's father Ganesh Ram came to him and stated that Jiwan Ram slapped his son, therefore, he should settle the matter. Witness further stated that when he went to deceased Jiwan Ram to ask as to why he slapped Hapu Ram, then deceased Jiwan Ram showed a paper signed by Hapu Ram, wherein Hapu Ram threatened deceased that if he will not marry his daughter with him, then, he will force the consequences. The witness admitted that Ex.P-21 is the same document.

In the light of the material available on record, it is first necessary to see whether commission of offence was with the common object or intention of all the accused to commit offence. The facts, referred to above, show that in the statement of approver itself, Jeep was hired by Raju Ram and Surja Ram to visit village Budi. They thereafter visited many places and had taken their dinner at Naina Ram's place. At about 12, Raju Ram, Mohan Ram, Surja Ram and Bhanwra Ram started for village Budi and it is on the way that Hapu Ram was found standing with the motor cycle. Raju Ram got down and had some conversation with Hapu Ram. Hapu Ram joined them and the Jeep was, thereafter, turned to other side. On the way again, Jiwan Ram met, when they reached close to Jiwan Ram, then Hapu Ram and Surja Ram got down and brought deceased Jiwan Ram in the Jeep, though Mohan Ram raised an objection.

But, Jiwan Ram was forcibly brought in the Jeep and Hapu Ram, who was having pistol, threatened them. The approver further stated that the Jeep was ultimately taken towards Bidasar and after going 15 – 20 km. From village Kattar, the Jeep was stopped near the well existing on the road side and after stopping Jeep, Hapu Ram and Surja Ram strangulated Jiwan Ram. In the cross-examination, said witness stated that he was not knowing what conversation was made between Hapu Ram and Jiwan Ram when deceased was taken in the Jeep. It was further admitted that deceased Jiwan Ram neither made any noise, nor resisted to sit in the jeep. It was further admitted that even deceased never tried to come out from the jeep and otherwise he was not tied up in the jeep. As per the statement of witness, even cycle tube was not there in the jeep and no threatening was given to deceased by Surja Ram and Hapu Ram. It was also stated that deceased Jiwan Ram was strangulated by Hapu Ram, but before doing so, asked Jiwan Ram to at least marry his younger daughter with him and in that event, he will relieve him. On denial of the proposal given by the accused, Hapu Ram strangulated deceased Jiwan Ram.

Perusal of Ex.P-21 also shows that Hapu Ram asked Jiwan Ram to marry his daughter with him and not to cancel the marriage. Statements of other witnesses also prove that Hapu Ram was giving threatening to deceased Jiwan Ram for not

accepting his proposal of marriage. Thus, deceased Hapu Ram was having motive to commission the offence. The facts, available on record, show that Hapu Ram had not hired the jeep, rather jeep was hired by Raju Raj and Surja Raj for visiting village Budi and they had proceeded for village Budi. On the way, accused Hapu Ram met standing on the road, who was taken in the jeep. Deceased Jiwan Ram was also found on the road who was taken in the jeep by accused Hapu Ram and Surja Ram after same conversation, but what was the conversation between the three, is not being stated. In view of statement of PW 1 Chatra Ram in his cross examination, Jiwan Ram was not given any threatening or he was not forcibly taken in the jeep with a common object or intention for commission any offence, though Hapu Ram had given threatening to other riders of jeep for raising objection for taking Jiwan Ram in the jeep. While the jeep was taken forwards Bidasar, then after leaving 15 – 20 km. from village Kattar, jeep was stopped near the well existing on the road side. At that time, Hapu Ram, Surja Ram and deceased Jiwan Ram got down and as per the statement made by the approver, in the cross-examination, Hapu Ram first stated that Jiwan Ram should at least marry his younger daughter and, in that event, he would be relieved and it is only on denial of the deceased that Hapu Ram strangulated deceased by cycle tube and thrown accused in the well. In the facts mentioned above

and perusal of other material available on record, it has not come out that all the persons assembled with the common object to commission an offence. Meeting of Hapu Ram on the way with pre-plan, is not being stated and even meeting of deceased Jiwan Ram on the way, was not in the knowledge and even not thought of at the time when Surja Ram and Raju Ram hired the jeep of approver Chatra Ram. If the events are looked into, then it shows that it is due to deceased's son Omprakash's motor cycle got deflate on the way while Omprakash and deceased Jiwan Ram were returning back to their place at about 11.00 p.m., that Jiwan Ram had to be left alone. This is an event which cannot be planned by the accused. Thus, presence of Jiwan Ram on the way cannot be part of the plan of the group traveling in the jeep. It is at the point when accused Hapu Ram and Surja Ram met deceased two may have planned something as they had some conversation, but what was that conversation has not come on record and Jiwan Ram had boarded the jeep without any protest. It is, however, a fact that jeep was lastly driven by the accused Hapu Ram who stopped the jeep near a well while moving to village Bidasar and at that stage, Hapu Ram and Surja Ram got down from the jeep. The approver initially stated that Surja Ram and Hapu Ram strangulated the deceased, but in the cross-examination,he stated that accused Hapu Ram first asked Jiwan Ram to marry at least his younger daughter to him

so as to relieve him and on his denial, Hapu Ram strangulated deceased and thrown him in the well. Ex.P-21 is a letter written by accused Hapu Ram to the deceased Jiwan Ram not to cancel his elder daughter's marriage with him. Thus, the available facts shows that Hapu Ram alone got same motive in his mind to commit offence. The perusal of record as well as the material discussed above proves that prosecution could not prove commission of offence with the common object or even common intention. Even the trial Court has mainly relied on the statement of approver. However, if the statement of said approver, in his cross-examination, is looked into, then also, case for committing offence with even common intention is not made out. As per the statement pf PW 4 Omprakash, PW 20 Jyani and PW 2 Jagmal Ram and statements of other witnesses show that accused Hapu Ram was pressing deceased JiwanRam to get his daughter married, however, Jiwanram's availability at a particular time and on a spot, is not being visualized or stated and if the statements of all the witnesses are taken note of, then it becomes clear that presence of Jiwan Ram on the road was incidental. Thus, hiring of jeep by Surja Ram and Raju Ram and, thereafter, boarding the said jeep by Hapu Ram cannot be said to be with intention to commit offence, deceased came alongwith Kesha Ram and Surja Ram without any protest and he is not said to have resisted for taking him in the jeep after some

unknown conversation, therefore, taking Jeevan Ram in Jeep to commit offence with common intention is also not proved. At last, Hapu Ram and Surja Ram got out of Jeep near the well along with deceased Jeevan Ram, but there also, Hapur Ram asked Jeevan Ram to marry his younger daughter with him and on denial, strangulated deceased. Again that fact does not prove commission of offence with common intention, therefore, prosecution could not prove commission of offence with common object or common intention.

Even the case under Section 120B, IPC, is also not made out, because there is nothing on record to prove even criminal conspiracy between the party members. The material available on record does not show that the commission of offence was with some conspiracy. In view of the discussion made above by us, it cannot be said to be case of criminal conspiracy.

Now, we take up individual case of the accused. As per the facts discussed, it is proved beyond doubt that Hapu Ram is guilty of commission of offence under Section 302 of IPC with motive in his mind. Hapu Ram was annoyed with deceased Jiwan Ram, for the reason that Jiwan Ram did not agree to marry his daughter. Hapu Ram had sent a letter (Ex.P-21) to deceased Jiwan Ram giving threatening for the reason. The witnesses corroborated this part and stated that Hapu Ram was pressing Jiwan Ram to marry his daughter with him and, on one occasion,

Hapu Ram was even slapped by Jiwan Ram, for that reason. As per the statement of Chatra Ram, Hapu Ram strangulated deceased Jiwan Ram by cycle tube and as per the statement of Dr. Vasudeo Balani (P.W.26), deceased Jiwan Ram died of asphyxia due to strangulation. Rubber tube was found wrapped around the neck of deceased three times. Thus, even the medical evidence has supported the prosecution case. The statements of prosecution witnesses and documents exhibited, as discussed at length, shows that the finding of the trial Court for holding offence of accused Hapu Ram under Section 302 of IPC as proved, is proper. Since accused Hapu Ram thrown the body of deceased Jiwan Ram in the well, thus offence under Section 201 of IPC is also found proved against him.

So far as change under Section 364 of IPC is concern as per the statement, in the cross-examination of Chatra Ram ,he has stated that though accused Hapu Ram and Surja Ram had conversation with deceased Jiwan Rambefore taking himn in the jeep, but he does not know what was that conversation and the said witness further admitted that deceased Jiwan Ram was not tied up or threatened in the jeep and deceased has not made noise or resisted while he was taken in the jeep, therefore, prosecution could not prove case under Section 364 beyond doubt. Thus, the accused Hapu Ram is entitled for benefit of doubt for the offence under Section 364 of IPC.

The accused Hapu Ram has been convicted under Section 341 of IPC. In view of the statements of witnesses, it has not come out that deceased Jiwan Ram was wrongfully restrained. Even PW 1 Chatra Ram had stated that deceased Jiwan Ram joined them in the jeep without any noise or even resisting. Thus, taking note of the statement in the cross-examination of the said witness, it becomes clear that prosecution has not proved case for wrongfully restrained of deceased Jiwan Ram, because other than the statement of witness – Chatra Ram, there is no material to prove offence under Section 341 of IPC. Therefore, conviction of the accused Hapu Ram under Section 341 of IPC cannot be maintained. Hence conviction of the accused Hapu Ram under Section 341 of IPC is also set aside.

So far as the case of Surja Ram is concerned, we have carefully seen his participation in the light of the statement made by the witnesses and material available on record. Approver – Chatra Ram initially made allegations against Surja Ram for participating in the crime. itness stated that Surja Ram and Hapu Ram strangulated deceased Jiwan Ram, but in the cross-examination, said witness stated that deceased Jiwan Ram was strangulated by Hapu Ram and before doing so, even Hapu Ram asked deceased Jiwan Ram to marry his younger daughter and, in that event, he would be relieved, but proposal was not accepted by Jiwan Ram and, at that time, accused Hapu Ram

strangulated deceased by a cycle tube. Thus, the allegation of strangulation by Surja Ram was not made in the cross-examination, hence conviction of accused Surja Ram under Section 302 of IPC cannot be maintained because of contradiction in the statement . We have already recorded our finding that material available on record does not show that offence was committed with common intention and there was a criminal conspiracy for commission of offence. Hence, conviction of accused Surja Ram under Section 302/120B of IPC cannot be maintained in absence of proof beyond doubt. We have further recorded our finding that a case under Section 364 of IPC is not made out , hence, conviction of accused Surja Ram under Section 364 of IPC cannot be maintained. The case under Section 201 of IPC is also not made out against the said accused, because there is no allegation against Surja Ram to do any act with a view to disappear the evidence. The prosecution could not prove case beyond doubt in view of contradiction in the statement of approver. Thus, accused Surja Ram has wrongly been convicted for the offence under Section 201 of IPC.

The accused Surja Ram has been convicted under Section 341 of IPC, but in view of the statements of witnesses, it has not come out that deceased Jiwan Ram was wrongfully restrained. Even PW 1 Chatra Ram had stated that deceased Jiwan Ram joined them in the jeep without any noise or even resisting.

Thus, taking note of the statement in the cross-examination of the said witness, it becomes clear that prosecution has not proved case of wrongfully restrained of deceased Jiwan Ram, because other than the statement of witness – Chatra Ram, there is no material to prove offence under Section 341 of IPC. Therefore, conviction of the accused under Section 341 of IPC cannot be maintained. Hence conviction of the accused Surja Ram under Section 341 of IPC is set aside.

So far as accused Raju Ram is concerned, he is convicted under Sections 302/34, 341 of IPC and Section 364 read with Section 120-B of IPC. On Marshalling the evidence, we find no material against accused Raju Ram to convict him under Section 302 read with Section 34 of IPC and Section 364 read with Section 120-B of IPC and Section 341 of IPC. No witness has made any allegation against Raju Ram to have participated in any of the offence. Even it has not been shown that there was any criminal conspiracy and the offence of murder and other offences were commissioned with common intention. No witness has attributed any allegation against Raju Ram for commission of an offence under Sections 364, 341 and Section 302 of IPC and, as we have already recorded our finding that case of criminal conspiracy has not been made out, there was no common intention between the parties, therefore, conviction of accused Rajuram cannot be maintained.

We accordingly set aside the judgment of the learned trial Court of conviction of accused Hapu Ram under Section 364, 341, 120B and 302/34 of IPC. Said accused Hapu Ram is, however, convicted under Section 302 and Section 201 of IPC. He is sentenced to life imprisonment and penalty of Rs.5,000/- for his offence under Section 302 and for conviction under Section 201 of IPC, he is sentenced to imprisonment for a period of three years and a fine of Rs.1000/-. Both the sentences are to run concurrently.

Accused Surja Ram is acquitted from all the offences. The judgment of the learned trial Court convicting Surja Ram under Sections 120B, 364, 341, 302, 302/34 and 201 of IPC is set aside and accordingly, said accused is ordered to be released forthwith, if not required in any other case.

Accused Raju Ram is also acquitted and accordingly, his conviction and sentence under Sections 120B, 364, 341/34, 302, 302/34 and 201/34 of IPC, passed by the learned trial Court is set aside. Since Raju Ram was released on bail by this Court vide order dated 04.04.2003, his bail bonds stand discharged.

In the result, the appeal is partly allowed as indicated above.

(MUNISHWARNATH BHANDARI),J. **(BHAGWATI PRASAD),J.**

scd.